UNITED NATIONS

AT

Administrative Tribunal

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ADMINISTRATIVE TRIBUNAL

Judgement No. 629

Cases No. 679: CLAVEL
No. 680: SALLIER

Against: The Secretary-General of the United Nations

THE ADMINISTRATIVE TRIBUNAL OF THE UNITED NATIONS,

Composed of Mr. Luis de Posadas Montero, Vice-President, presiding; Mr. Hubert Thierry; Mr. Mikuin Leliel Balanda;

Whereas, on 30 June 1992, Bernard Clavel and Michel Sallier, staff members of the United Nations, filed applications requesting the Tribunal:

> "... to instruct the Secretary-General to take appropriate steps, such as retroactive reclassification to the P-3 level, effective from 23 October 1984, so as to ensure that the [Applicants'] salary and pensionable remuneration are at least equal to what they would be if [they] had not been promoted to the P-2 level; failing that, to order [their] retroactive reinstatement at the G-7 level, effective from 23 October 1984."

Whereas the Respondent filed his answers on 16 and 20 November 1992;

Whereas the facts in the case are as follows:

Bernard Clavel entered the service of the United Nations Office at Geneva (UNOG) on 4 April 1966, and served on a number of short-term appointments. On 1 September 1966, he was granted a probationary appointment as a Statistical Clerk at the G-4 level, in

the Commodities Division of the United Nations Conference on Trade and Development (UNCTAD). On 1 April 1968, he received a permanent appointment. He was promoted to the G-5 level on 1 August 1968, and to the G-6 level on 1 July 1973, with the functional title of Statistical Assistant. He was promoted to the G-7 level on 1 March 1982. On 1 January 1984, he was promoted to the P-2 level, with the functional title of Associate Statistician. On 25 February 1991, he was reassigned, within UNCTAD, as an Associate Economic Affairs Officer.

Michel Sallier entered the service of UNOG on 29 August 1968, and served on a number of short-term appointments until 28 February 1969. On 1 March 1969, he was granted a two-year fixed-term appointment at the G-3 level, as a Finance Clerk. He was transferred to UNCTAD as a Statistical Clerk, with effect from 16 February 1970. On 1 June 1970, he was promoted to the G-4 level. On 1 March 1971, he received a probationary appointment, and on 1 June 1972, a permanent appointment. At that time, the Applicant was promoted to the G-5 level as a Statistical Assistant. He was promoted to the G-6 level, with effect from 1 July 1973, and to the G-7 level, with effect from 1 March 1982. On 1 January 1984, he was promoted to the P-2 level, with the functional title of Associate Statistician.

In its resolution 31/193 B, dated 22 December 1976, the General Assembly requested the Secretary-General "to develop, in the course of 1977, job classification standards for the General Service category at Geneva and, based upon them, to introduce a job classification system, including a structure of occupational groups and a classification of posts". Accordingly, a classification review of all General Service posts in UNOG was conducted from 1979 to 1984.

On 23 October 1984, the Chief of the Personnel Service of UNOG informed the Applicants that as a result of the job classification exercise, the Secretary-General had approved their

promotion to the P-2 level, with effect from 1 January 1984. On 14 November 1984, personnel action forms were issued to implement the Applicants' promotion to the P-2, step VII, level.

In a memorandum dated 19 January 1987 addressed to the Chief of the Administrative Service of UNCTAD, Mr. Sallier expressed his concern at what he described as his continuously decreasing salary and pensionable remuneration since his promotion in 1984. He stated, inter alia:

> "... Referring to disposition 103.16 (c) of the Staff Rules, which presumably would enter into force should my promotion occur at the present time, I should appreciate your authorizing my pensionable remuneration rate to be brought to that corresponding to my earlier grade, as long as pensionable remuneration is lower in grade P-2 than in grade G-7. For my part, I would be prepared to contribute for a higher proportion to the Pension Fund in this connection."

In a reply dated 29 January 1987, the Chief of the Personnel Section of UNCTAD stated:

> "We could not sympathize more with your situation. However, the fact is that rule 103.16 was taken into account at the time you were promoted in 1984. There is unfortunately nothing that can be done now three years after your promotion, as the rule concerned is not applicable."

On 30 April 1987, the Applicant and three other staff members who were also promoted to the P-2 level in January 1984, as a result of the job classification exercise, wrote to the Secretary-General, requesting a review of the consequences of the classification exercise on their pensionable remuneration, and proposing the "setting as the minimum floor level for [their] pensionable remuneration, the amount of the pensionable remuneration prevailing at [their] previous grade in the General Service category in Geneva".

Having received no reply to their request, the Applicants lodged appeals with the Joint Appeals Board (JAB) on 27 January

1988. On 16 March 1992, JAB submitted its report, which contained the following unanimous conclusion and recommendation:

> "Conclusion and recommendation
>
> 36. ... The Panel unanimously concludes that the appeal[s] are not only time-barred, but the various issues raised by the Appellant[s] are either not sustainable or outside the competence of the JAB.
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> 37. Accordingly, the Panel makes no recommendation in support of the appeal[s].
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> ...
>
> 38. ... The Panel took full account of the different conditions of service which obtain between staff serving in the Professional category and those in the General Service category, which a staff member must accept upon promotion to the Professional category and which are a factor which has a bearing on many United Nations staff serving in Geneva."

On 30 March 1992, the Deputy Director, Office of the Under-Secretary-General for Administration and Management, transmitted the JAB report to the Applicants and informed them:

> "The Secretary-General has taken note of the Board's decision that your appeal was time-barred under staff rule 111.2 (a) (i) and (ii) and that there were no exceptional circumstances which would warrant a waiver of the time-limits under staff rule 111.2 (e). The Secretary-General has further noted the Board's conclusion on the substance of your case and accordingly decided to take no further action on the matter."

On 30 June 1992, the Applicants filed with the Tribunal the applications referred to earlier.

Whereas the Applicants' principal contentions are:

1. The appeals are not time-barred, since the Applicants did not become aware of the negative financial consequences of the decision to promote them to the P-2 level until months after they

were notified of that decision, in particular as of 1986, as shown in their statements of earnings.

2. The relative reduction of the Applicants' salary and pensionable remuneration, subsequent to their promotion to the P-2 level, was contrary to the concept of promotion as defined in the relevant staff rules and related instructions promulgated by the Secretary-General, and violated their acquired rights.

Whereas the Respondent's principal contentions are:

1. The Applicants' appeals are time-barred pursuant to staff rule 111.2 (a). The Respondent's decision not to waive this time-limit was a reasonable exercise of discretion which does not violate the rights of the Applicants.

2. Staff regulation 12.1 and the various subsidiary rules promulgated by the Secretary-General protect the level of salary and emoluments earned by a staff member prior to promotion. Various subsidiary rules define the way in which a promotion is to be implemented. The promotion of the Applicants from the G-7 to the P-2 level as a result of the job classification exercise at Geneva was made in full compliance with the relevant rules and instructions, and did not negatively affect the Applicants' contractual status.

The Tribunal, having deliberated from 2 to 17 November 1993, now pronounces the following judgement:

I. The two Applicants, Bernard Clavel and Michel Sallier, were recruited locally at Geneva in April 1966 and August 1968 respectively. Both were assigned to UNCTAD as statisticians in the General Service category, and both were promoted to the G-7 level.

During the classification review of General Service posts at Geneva, pursuant to General Assembly resolution 31/193 B of 22 December 1976, the G-7 posts occupied by the Applicants were

reclassified at the P-2 level. The Applicants were notified of the change in letters dated 23 October 1984.

II. Having noted, in their case, a relative reduction in salary and pensionable remuneration as compared to G-7 levels, the Applicants and some of their colleagues in the same situation wrote to the Secretary-General on 30 April 1987, requesting action to ensure that their level of remuneration corresponded to what it would have been if they had not been promoted to the Professional category. Having received no explicit reply, they lodged appeals with the Joint Appeals Board on 27 January 1988. The Board rejected the appeals.

It is the Respondent's decision to accept the Board's recommendation that the two Applicants are contesting before the Tribunal. They allege, first of all, that there was a violation of staff rule 103.9 and of the provisions of documents ST/IC/81/21 and ST/SGB/166. They further contend that their acquired rights guaranteed under staff regulation 12.1 were violated, because of the reduction in salary and pensionable remuneration from what they would have enjoyed if they had remained at their grade in the General Service category.

III. The Respondent contends, in the first place, that the applications are time-barred under staff rule 111.2 (a). As to the merits, the Respondent argues that the promotion of the Applicants from the G-7 level in the General Service category to the P-2 level in the Professional category as a result of the job classification exercise was made in compliance with the relevant rules and instructions. The Respondent adds that the promotions did not negatively affect the Applicants' 1984 contractual status; their applications should therefore be rejected.

IV. The Tribunal notes that the two applications are related in that they both seek a revision of similar decisions by the Respondent that adversely affect the Applicants. Moreover, the Applicants use identical arguments in support of their claims.

In the interests of proper administration of justice, there is good reason to have a joinder and dispose of the two applications by a single judgement.

V. With regard to the Respondent's argument that the applications are time-barred, the Tribunal notes that the Applicants were notified of their promotion from the G-7 to the P-2 level in letters dated 23 October 1984, following the reclassification of their posts, and did not request a review until 30 April 1987. The Tribunal therefore finds that the applications are time-barred.

VI. Nevertheless, inasmuch as it was only ex post facto that the situation which the Applicants consider prejudicial became apparent in their salary statements, the Tribunal will examine the substantive merits of the applications.

VII. With respect to the violation of the provisions of staff rule 103.9 and the provisions of information circular ST/IC/81/21 of 19 March 1981 and circular No. 2972 of 9 December 1982, as alleged by the Applicants, the Tribunal points out, first of all, that they accepted, freely and without coercion, their promotion resulting from the reclassification of their former posts to the Professional category. Accordingly, ipso facto, they implicitely accepted the terms and conditions governing their new posts, including the pertinent methodology for the computation of salaries. Upon their promotion, the Applicants ceased to belong to the General Service category and became subject to the different statutory regime for Professionals, with all the implications for their remuneration and the computation of their retirement benefits, with the exception of

the application of staff rule 103.16 (c) regarding pensionable remuneration (Cf. Judgement No. 262, Thorgevsky (1980)).

Contrary to what the Applicants contend, none of the provisions of the instructions which they cite, and which seek precisely to protect staff members promoted as a result of job classification from negative effects on their "existing contractual status, salary and other entitlements", were still applicable in 1987. As the Respondent states, the Applicants' contractual status changed after 23 October 1984, and, on the contrary, it was staff rule 103.9 (i) that applied to their case when they filed their claims in 1987.

It follows that, in 1987, the Respondent could not have been in violation of those provisions when he was no longer supposed to apply them. On the contrary, the Tribunal finds that the Respondent properly applied the provisions governing the Applicants' 1984 contractual status, which they wrongly claim were ignored. Consequently, there is no basis for that claim.

VIII. The Applicants' second claim is that there was a violation of their acquired rights guaranteed under staff regulation 12.1. They contend that the reduction both in their salary and in their pensionable remuneration altered the terms and conditions of their service from what they would have enjoyed if they had remained in the General Service category.

The Tribunal considers that, as stated in the preceding paragraph, the promotion of the Applicants as a result of job classification at the Geneva Office did not negatively affect their 1984 contractual status. Furthermore, the Tribunal finds that the loss about which the Applicants complain is not attributable to any violation of their rights by the Respondent.

Accordingly, there is no basis either for the second claim, which is dismissed.

IX. For the foregoing reasons, the Tribunal:

1. Orders a joinder of the applications filed under Nos. 679 and 680;

2. Rules that the Applicants filed their internal appeals outside the time-limit prescribed in staff rule 111.2 (a);

3. As to the merits, declares that the two applications are unfounded;

4. Rejects the applications.

(Signatures)

Luis de POSADAS MONTERO
Vice-President, presiding

Mikuin Leliel BALANDA
Member

Hubert THIERRY
Member

New York, 17 November 1993

R. Maria VICIEN-MILBURN
Executive Secretary